

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
 Billing and Collection Services Provided)
 By Local Exchange Carriers for)
 Non-Subscribed Interexchange Services) RM-9108
)
 MCI Telecommunications Corporation)
)
 Petition for Rulemaking)
)

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

COMMENTS OF AMERICATEL CORPORATION

AmericaTel Corporation ("AmericaTel"),¹ by its attorneys and pursuant to Section 1.405 of the Commission's rules, 47 C.F.R. § 1.405 (1996), hereby comments on the Petition for Rulemaking filed by MCI Telecommunications Corporation ("MCI") in the above-captioned proceeding.²

¹ AmericaTel has an interest in the instant proceeding as a prospective entrant into the domestic interexchange marketplace. AmericaTel currently holds FCC authorizations to provide a variety of international telecommunications services.

² Petition for Rulemaking, RM-9108 (filed May 19, 1997) ("MCI Petition"). MCI filed its Petition partly in response to the Petition for Declaratory Ruling filed by America's Carriers Telecommunications Association ("ACTA"). Petition for Declaratory Ruling, File No. ENF-97-05 (filed January 17, 1997) ("ACTA Petition"). ACTA urged the Commission to enforce existing law to require incumbent Local Exchange Carriers ("ILECs") to provide billing information to interexchange carriers ("IXCs") offering 10XXX service. See *id.* at 1.

AmericaTel's participation in the instant proceeding stems from its concern, based upon allegations raised in the MCI Petition, the ACTA Petition and comments filed regarding the ACTA Petition, that certain local exchange carriers ("LECs") may be planning to curtail or cease their provision to IXC's and third party billing companies of information sufficient for billing and collection purposes (specifically, Billing Name and Address ("BNA") information) or to make the acquisition of such information economically impractical.³ As a potential entrant into the booming marketplace for non-subscribed services,⁴ AmericaTel urges the Commission to take note that the availability of affordable BNA information is vital to the preservation and growth of competition in that marketplace. AmericaTel also urges the Commission to recognize that FCC rules do not currently provide adequate assurance that BNA information will be sufficiently available to protect such competition. The ongoing efforts by various LECs to enter into the interexchange marketplace themselves only heighten the possibility of anticompetitive abuses through the withholding of BNA information. For these and other reasons, AmericaTel supports the MCI Petition to the extent that it calls on the Commission to protect access by IXC's and third party billing companies to BNA information on a competitively neutral basis and at reasonable rates.

³ See, e.g., MCI Petition at 2, 10; ACTA Petition at 5; Comments of Telecommunications Resellers Association (File No. ENF-97-05) (filed May 19, 1997) at 2.

⁴ Like MCI, AmericaTel defines non-subscribed services as interexchange services provided to customers based on event-generated customer choice, rather than on a presubscription arrangement with a primary interexchange carrier. See MCI Petition at 1-2.

I. Access To Affordable BNA Information Is An Essential Ingredient Of Competition In The Market For Non-Subscribed Services.

As MCI correctly observes, non-subscribed services currently account for a significant portion of the interexchange market.⁵ These services—including, inter alia, collect calling, long-distance service charged to "joint use" calling cards offered by the Bell Operating Companies, toll calls billed to third party numbers, 900 services and 10XXX long-distance service—offer valuable benefits and flexibility that consumers have come in short order to expect when making use of a telephone. They also are an important means by which smaller carriers can enter the interexchange marketplace, and, through competitive pricing, drive down the cost of interexchange service for end users.

The ready availability of BNA information is essential to the survival of competitive conditions in the non-subscribed services market. For certain types of non-subscribed services, such as 10XXX dialing, the inability of the IXC providing the service to determine the name and address of a customer would entirely prevent the IXC from billing its customers for the calls they make.⁶ Plainly, a service provider that cannot obtain payment for services provided cannot afford to offer them. Furthermore, the denial of affordable BNA information to third party billing companies may drive such companies out of business and would certainly harm those IXCs that rely on such companies for billing and collection services. In addition, at least one party has noted that any IXC requires BNA to bill a customer when an ILEC designates the IXC as an end user's

⁵ MCI Petition at 1.

⁶ See ACTA Petition at 4; Comments of MCI Telecommunications Corporation (File No. ENF-97-05) at 1.

primary IXC without the IXC's knowledge or consent — a practice that evidently is not uncommon.⁷ Without BNA information, an IXC in this position is charged by the LEC for access service without being able to bill the end user for the service that the IXC has provided. Thus, the withholding of BNA information by LECs could result in the rapid exit of numerous competitors from the interexchange marketplace and significant financial harm to any that remain.

II. The FCC's Rules Should State Unambiguously That All LECs Are Required To Provide BNA Information To IXCs At Reasonable Rates And On A Nondiscriminatory Basis.

AmericaTel concurs with MCI that current FCC rules do not make sufficiently clear the obligation on LECs to provide BNA information to IXCs for all services upon request and at reasonable prices.⁸ While the Telecommunications Act of 1996 (the "1996 Act") seems clearly to impose this duty on all ILECs,⁹ certain ILECs maintain that neither that Act nor the Commission's rules and decisions contain such a requirement. For example, BellSouth, Bell Atlantic and NYNEX assert that, under a recent Commission decision, ILECs have the option of disclosing or

⁷ Comments of Preferred Carrier Services, Inc. (File No. ENF-97-05) (filed May 17, 1997) at 3.

⁸ See MCI at 8.

⁹ Section 251(c)(3) of the 1996 Act imposes a duty on ILECs to provide to "any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements on an unbundled basis." 47 U.S.C. § 251(c)(3). The Commission has held that IXCs fall under the definition of "any requesting telecommunications carrier," and has found exchange access and interexchange services to qualify as "telecommunications services." Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15683, 15763 (1996) (subsequent history omitted). Section 153(29) of the 1996 Act defines a "network element" either as facilities or equipment used to provide telecommunications services, or as "information sufficient for billing and collection . . . of a telecommunications service." 47 U.S.C. § 153(29).

not disclosing BNA information associated with 10XXX calls.¹⁰ Others, such as SBC Communications, Inc., take the view that ILECs are indeed required to provide information sufficient for billing and collection to requesting telecommunications carriers for the provision of a telecommunications service.¹¹ Thus, even without more, it is apparent that clarification of ILECs' duties regarding BNA information is needed.

Other factors, however, argue strongly for an unambiguous rule requiring all LECs to provide BNA information to IXC's on a non-discriminatory basis and at reasonable rates. The first is the virtual explosion of demand for non-subscribed services. The increasing importance of non-subscribed services to consumers is, in itself, good reason for the Commission to take steps to safeguard competitive conditions in the market for those services so as to foster reasonable rates for the user public. Moreover, as calling volume increases, the risk of massive fraud against IXC's that cannot identify and bill callers multiplies.

An additional factor supporting the mandatory provision of BNA information is the ongoing effort of various ILECs to obtain FCC and/or court authority to enter the interexchange marketplace. Given the critical importance of BNA information to IXC's, and the FCC's prior finding that only LECs have the capacity, as a byproduct of their provision of exchange access

¹⁰ BellSouth Comments (File No. ENF-97-05) (filed May 19, 1997) at 5; Bell Atlantic and NYNEX Comments (File No. ENF-97-05) (filed May 19, 1996) at 2 (citing Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Third Order on Reconsideration, 11 FCC Rcd 6835, 6845 (1996)).

¹¹ Comments of SBC Communications, Inc. (File No. ENF-97-05) (filed May 19, 1997) at n.3 (citing 47 U.S.C. §§ 251(c)(3), 153(29)).

service, to keep BNA information current,¹² any discretion on the part of LECs to discriminate in their provision of BNA information among IXC's so as to favor their own affiliates or harm their prospective rivals would clearly threaten competition in the interexchange marketplace.¹³

Finally, AmericaTel urges the Commission to investigate carefully whether, as MCI maintains, "current tariffed BNA rates are largely unreasonable and bear no relationship to the LECs' actual costs in providing this service."¹⁴ The Commission should also closely examine whether the current requirement that BNA be used only for a single call queried, and not re-used for repeated calls charged to the same telephone number, constitutes an unjustified windfall for LECs.¹⁵ If the Commission should find that LECs are abusing their monopoly on BNA information in these ways, a new rule requiring the provision of BNA information at reasonable rates would certainly be in order.

¹² See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, 8 FCC Rcd 4478, 4881 (1993).

¹³ For the same reasons, and to the extent that competitive LECs ("CLECs") have the capability to provide IXC's with BNA information, AmericaTel urges the Commission to require that they, too, make such information available to IXC's at reasonable rates and on a non-discriminatory basis.

¹⁴ MCI Petition at 8.

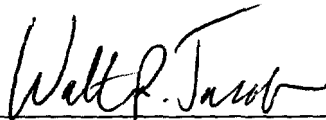
¹⁵ Id.

III. Conclusion

For the foregoing reasons, AmericaTel supports the MCI Petition to the extent that it seeks to protect access by IXC's and third party billing companies to BNA information on a competitively neutral basis and at reasonable rates. AmericaTel urges the Commission to initiate a proceeding as soon as possible to establish rules requiring all ILECs to provide BNA information to IXC's in that manner, and to impose the same requirement on all CLECs with the capability of providing BNA information.

Respectfully submitted,

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July 25, 1997

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CERTIFICATE OF SERVICE

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A handwritten signature in cursive script, reading "Bernice Duckett", written in black ink. The signature is fluid and stylized, with a prominent loop at the end of the last name.

Bernice Duckett